

XAVIER BECERRA  
Attorney General of California  
MARK R. BECKINGTON  
ANTHONY R. HAKL  
Supervising Deputy Attorneys General  
GABRIELLE D. BOUTIN, SBN 267308  
R. MATTHEW WISE, SBN 238485  
ANNA T. FERRARI, SBN 261579  
TODD GRABARSKY, SBN 286999  
NOREEN P. SKELLY, SBN 186135  
Deputy Attorneys General  
1300 I Street, Suite 125  
P.O. Box 944255  
Sacramento, CA 94244-2550  
Telephone: (916) 210-6053  
Fax: (916) 324-8835  
E-mail: Gabrielle.Boutin@doj.ca.gov  
*Attorneys for Plaintiff State of California, by and  
through Attorney General Xavier Becerra*

16 STATE OF CALIFORNIA by and through  
17 Attorney General Xavier Becerra;  
18 COUNTY OF LOS ANGELES; CITY OF  
LOS ANGELES; CITY OF FREMONT;  
CITY OF LONG BEACH; CITY OF  
OAKLAND; CITY OF STOCKTON,

3:18-cv-01865

**PLAINTIFFS' UNOPPOSED MOTION  
TO ENTER FINAL JUDGMENT AFTER  
REMAND; [PROPOSED] ORDER**

Hearing Date: September 12, 2019  
Time: 1:30 p.m.  
Dept: 3  
Trial Date: January 7, 2019  
Judge: The Honorable Richard G.  
Seeborg  
Action Filed: March 26, 2018

22           **WILBUR L. ROSS, JR., in his official**  
23         **capacity as Secretary of the U.S.**  
24         **Department of Commerce; U.S.**  
25         **DEPARTMENT OF COMMERCE; RON**  
          **JARMIN, in his official capacity as Acting**  
          **Director of the U.S. Census Bureau; U.S.**  
          **CENSUS BUREAU; DOES 1-100,**

### Defendants.

1     **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2                 PLEASE TAKE NOTICE THAT on September 12, 2019, at 1:30 p.m., or as soon thereafter  
 3 as the matter may be heard, before the Honorable Richard Seeborg in Department 3 of the United  
 4 States District Court for the Northern District of California, located at 450 Golden Gate  
 5 Avenue, San Francisco, California 94102, Plaintiffs State of California, County of Los Angeles,  
 6 and Cities of Los Angeles, Fremont, Long Beach, Oakland, and Stockton, and Plaintiff-in-  
 7 Intervention Los Angeles Unified School District will and hereby do move this Court to enter  
 8 Plaintiffs' [Proposed] Final Judgment After Remand, Order of Vacatur, and Permanent Injunction  
 9 attached as "Exhibit A" to this motion.

10          This motion is based on this Notice of Motion, the accompanying Memorandum of Points  
 11 and Authorities, the accompanying [Proposed] Final Judgment After Remand, Order of Vacatur,  
 12 and Permanent Injunction, the papers and pleadings on file in this action, and such matters as may  
 13 be presented to the Court at or before the time of the hearing.

14          Although Plaintiffs have filed this request as a noticed motion in accordance with Local  
 15 Rule 7-1, Defendants do not oppose this motion and the parties do not require a hearing.

16                 **MEMORANDUM OF POINTS AND AUTHORITIES**

17     **I. INTRODUCTION**

18          Following the Supreme Court's decision in *Dep't of Commerce v. New York*, 139 S. Ct.  
 19 2551, 2019 WL 2619473 (2019), Plaintiffs and Defendants conferred about the terms of a  
 20 proposed final judgment in this action. Plaintiffs now request that the Court enter the [Proposed]  
 21 Final Judgment After Remand, Order of Vacatur, and Permanent Injunction attached hereto as  
 22 "Exhibit A." Defendants do not oppose this motion.

23     **II. PROCEDURAL BACKGROUND**

24          This Court entered final judgment in this action on March 13, 2019. ECF No. 207. The  
 25 same day, Defendants filed a notice of appeal of the final judgment. ECF No. 208. On March 18,  
 26 2019, Defendants filed a petition for writ of certiorari before judgment in the United States  
 27 Supreme Court. Petition for a Writ of Certiorari Before Judgment, *Ross v. California*, --- S. Ct.--  
 28 -, 2019 WL 1258816 (2019).

1       On June 27, 2019, the United States Supreme Court issued its opinion in the case of  
 2 *Department of Commerce v. New York*, affirming the portion of the district court's judgment  
 3 holding that Secretary Ross's decision to add a citizenship question to the 2020 Census violates  
 4 the Administrative Procedure Act. *Dep't of Commerce v. New York*, 139 S. Ct. at 2573-2576.

5       On June 28, 2019, the Supreme Court granted Defendants' petition for writ of certiorari  
 6 before judgment in this action. Its order directed as follows: "The judgment is vacated, and the  
 7 case is remanded to the United States Court of Appeals for the Ninth Circuit for further  
 8 consideration in light of *Department of Commerce v. New York*, 588 U.S. \_\_\_\_ (2019)." *Ross v.*  
 9 *California*, --- S. Ct.---, 2019 WL 1243674 (2019).

10      A writ of mandate subsequently issued from the Supreme Court to the Ninth Circuit Court  
 11 of Appeals, and on July 26, 2019, the Ninth Circuit Court of Appeals remanded the action to this  
 12 Court. ECF No. 235.

13 **III. PLAINTIFFS' REQUEST TO ENTER FINAL JUDGMENT AFTER REMAND**

14      Following the Supreme Court's decision in *Department of Commerce v. New York*, on July  
 15 11, 2019, the President issued an Executive Order stating that "[a]fter examining every possible  
 16 alternative, the Attorney General and the Secretary of Commerce have informed me that the  
 17 logistics and timing for carrying out the census, combined with delays from continuing litigation,  
 18 leave no practical mechanism for including the [citizenship] question on the 2020 decennial  
 19 census." Exec. Order 13,880, § 1, 84 Fed. Reg. 33,821, 33,821 (July 16, 2019) ("The [Supreme]  
 20 Court's ruling . . . has now made it impossible, as a practical matter, to include a citizenship  
 21 question on the 2020 decennial census questionnaire.").

22      Accordingly, the parties agree that entry of a final judgment is appropriate and have  
 23 conferred about the language of the [Proposed] Final Judgment After Remand, Order of Vacatur,  
 24 and Permanent Injunction. The proposed judgment permanently enjoins Defendants from  
 25 including a citizenship question on the 2020 decennial census questionnaire; from delaying the  
 26 process of printing the 2020 decennial census questionnaire after June 30, 2019, for the purpose  
 27 of including a citizenship question; and from asking persons about their citizenship status on the  
 28

1 2020 census questionnaire or otherwise asking a citizenship question as part of the 2020  
2 decennial census.

3 Defendants have informed Plaintiffs that they do not oppose this motion and that they  
4 intend to file a notice of non-opposition shortly after it is filed.

5 Plaintiffs therefore ask this Court to enter the attached [Proposed] Final Judgment After  
6 Remand, Order of Vacatur, and Permanent Injunction.

7

8 Dated: July 30, 2019

Respectfully Submitted,

9 XAVIER BECERRA  
10 Attorney General of California  
11 MARK R. BECKINGTON  
12 ANTHONY R. HAKL  
13 Supervising Deputy Attorneys General  
14 ANNA T. FERRARI  
15 TODD GRABARSKY  
16 NOREEN P. SKELLY  
17 R. MATTHEW WISE  
18 Deputy Attorneys General

19 */s/ Gabrielle D. Boutin*  
20 GABRIELLE D. BOUTIN  
21 Deputy Attorney General  
22 *Attorneys for Plaintiff State of California, by and*  
23 *through Attorney General Xavier Becerra*

24 Dated: July 30, 2019

*/s/ Charles L. Coleman*

CHARLES L. COLEMAN III, SBN 65496  
DAVID I. HOLTZMAN  
HOLLAND & KNIGHT LLP  
50 California Street, 28<sup>th</sup> Floor  
San Francisco, CA 94111  
Telephone: (415) 743-6970  
Fax: (415) 743-6910  
Email: charles.coleman@hklaw.com  
*Attorneys for Plaintiff County of Los Angeles*

25

26

27

28

1 Dated: July 30, 2019

2 MIKE FEUER  
3 City Attorney for the City of Los Angeles

4 /s/ Valerie Flores  
5 VALERIE FLORES, SBN 138572  
6 Managing Senior Assistant City Attorney  
7 200 North Main Street, 7th Floor, MS 140  
8 Los Angeles, CA 90012  
9 Telephone: (213) 978-8130  
10 Fax: (213) 978-8222  
11 Email: Valerie.Flores@lacity.org

12 Dated: July 30, 2019

13 HARVEY LEVINE  
14 City Attorney for the City of Fremont

15 /s/ Harvey Levine  
16 SBN 61880  
17 3300 Capitol Ave.  
18 Fremont, CA 94538  
19 Telephone: (510) 284-4030  
20 Fax: (510) 284-4031  
21 Email: hlevine@fremont.gov

22 Dated: July 30, 2019

23 CHARLES PARKIN  
24 City Attorney for the City of Long Beach

25 /s/ Charles Parkin  
26 SBN 159162  
27 333 W. Ocean Blvd., 11th Floor  
28 Long Beach CA, 90802  
Telephone: (562) 570-2200  
Fax: (562) 436-1579  
Email: Charles.Parkin@longbeach.gov

29 Dated: July 30, 2019

30 BARBARA J. PARKER  
31 City Attorney for the City of Oakland

32 /s/ Erin Bernstein  
33 MARIA BEE  
34 Chief Assistant City Attorney  
35 ERIN BERNSTEIN, SBN 231539  
36 Supervising Deputy City Attorney  
37 MALIA MCPHERSON  
38 Deputy City Attorney  
39 City Hall, 6th Floor  
40 1 Frank Ogawa Plaza  
41 Oakland, California 94612  
42 Telephone: (510) 238-3601  
43 Fax: (510) 238-6500  
44 Email: ebernstein@oaklandcityattorney.org

1 Dated: July 30, 2019

JOHN LUEBBERKE  
City Attorney for the City of Stockton

3 /s/ John Luebberke  
4 SBN 164893  
5 425 N. El Dorado Street, 2nd Floor  
Stockton, CA 95202  
Telephone: (209) 937-8333  
Fax: (209) 937-8898  
Email: John.Luebberke@stocktonca.gov

7  
8 Dated: July 30, 2019

DANNIS WOLIVER KELLEY  
SUE ANN SALMON EVANS  
KEITH A. YEOMANS

10 /s/ Keith A. Yeomans  
Keith A. Yeomans, SBN 245600  
11 115 Pine Avenue, Suite 500  
12 Long Beach, CA 90802  
Telephone: (562) 366-8500  
13 Fax: (562) 366-8505  
Email: kyeomans@dwkesq.com  
14 *Attorneys for Plaintiff-Intervenor*  
*Los Angeles Unified School District*

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18  
19 **FILER'S ATTESTATION**

20 Pursuant to Civil Local Rule 5-1(i)(3), regarding signatures, I hereby attest that  
21 concurrence in the filing of this document has been obtained from all signatories above.

22 Dated: July 30, 2019

/s/ Gabrielle D. Boutin  
GABRIELLE D. BOUTIN

1                   **[PROPOSED] ORDER**

2                 Having considered Plaintiffs' Unopposed Motion to Enter Judgment After Remand  
3 (Motion), and good cause appearing, the Court orders as follows:

- 4                 1. Plaintiffs' Motion is GRANTED.  
5                 2. To the extent that the March 13, 2019 judgment in this action, ECF No. 207, is still in  
6 place, that judgment is hereby VACATED.  
7                 3. The Court shall adopt and enter the [Proposed] Final Judgment After Remand, Order of  
8 Vacatur, and Permanent Injunction attached as "Exhibit A" to the Motion.

9                 **IT IS SO ORDERED.**

10               Dated: 8/1/2019

  
HON. RICHARD SEEBORG  
United States District Judge

# **EXHIBIT A**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

STATE OF CALIFORNIA, et al.,  
v.  
Plaintiffs,  
WILBUR L. ROSS, et al.,  
Defendants.

Case No. 18-cv-01865-RS  
18-cv-02279-RS

**[PROPOSED] FINAL JUDGMENT  
AFTER REMAND, ORDER OF  
VACATUR, AND PERMANENT  
INJUNCTION**

CITY OF SAN JOSE, et al.,  
v.  
Plaintiffs,  
WILBUR L. ROSS, et al.,  
Defendants.

In accordance with the Court's March 6, 2019 Findings of Fact and Conclusions of Law, the June 28, 2019 order of the United States Supreme Court in *Wilbur L. Ross, Secretary of Commerce, et al. v. California, et al.*, No. 18-1214, the Unopposed Motions to Enter Final Judgment After Remand filed by the Plaintiffs on July 30, 2019, and Rule 58(b)(2)(B) of the Federal Rules of Civil Procedure, it is **ORDERED, ADJUDGED, and DECREED** as follows:

## **FINAL JUDGMENT AFTER REMAND**

In Case No. 18-cv-1865-RS:

- Final judgment is entered for Plaintiffs and against Defendants on Plaintiffs' Second Cause of Action (Violation of APA; 5 U.S.C. § 706).
  - Final judgment is entered for Defendants and against Plaintiffs on Plaintiffs' First Cause of Action (Violation of Constitution's "Actual Enumeration" Mandate; U.S. Const. art. I, § 2, cl. 3).

In Case No. 18-cv-2279-RS:

- Final judgment is entered for Plaintiffs and against Defendants on Plaintiffs' Fourth Cause of Action (Violation of APA's Arbitrary and Capricious Standard; 5 U.S.C. § 706(2)(A)).
  - Final judgment is entered for Defendants and against Plaintiffs on Plaintiffs' First Cause of Action (Violation of Constitution's "Actual Enumeration" Mandate; U.S. Const. art. I, § 2, cl. 3); Plaintiffs' Second Cause of Action (Violation of the Constitution's Apportionment Clause; U.S. Const. amend. XIV, § 2); and Plaintiffs' Third Cause of Action (Violation of APA's Requirement that Administrative Action Be in Accordance with Law, Not Contrary to Constitutional Right, and Not Beyond Statutory Authority; 5 U.S.C. § 706(2)).

## **VACATUR AND REMAND**

Secretary Ross's March 26, 2018 decision to include a citizenship question on the 2020 Census is hereby **VACATED**. In light of the permanent injunction below, the decision is not remanded to the Department of Commerce.

## **PERMANENT INJUNCTION**

Defendants, including the Secretary of Commerce in his official capacity, the Director of the Census Bureau in his official capacity, and any successors to those offices, together with their agents, servants, employees, attorneys, and other persons who are in active concert or participation with the foregoing, see Fed. R. Civ. P. 65(d)(2), are hereby **PERMANENTLY ENJOINED** from including a citizenship question on the 2020 decennial census questionnaire;

1 from delaying the process of printing the 2020 decennial census questionnaire after June 30, 2019  
2 for the purpose of including a citizenship question; and from asking persons about citizenship  
3 status on the 2020 census questionnaire or otherwise asking a citizenship question as part of the  
4 2020 decennial census.

5 The Court will retain jurisdiction in these cases to enforce the terms of this Order until the  
6 2020 Census results are processed and sent to the President by December 31, 2020.  
7

8 **IT IS SO ORDERED.**

9  
10 Dated: \_\_\_\_\_, 2019

11  
12 RICHARD SEEBORG  
United States District Judge

13 CASE NOS. 18-cv-01865-RS, 18-cv-02279-RS  
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## CERTIFICATE OF SERVICE

Case Name: **State of California, et al. v.  
Wilbur L. Ross, et al.**

No. **3:18-cv-01865**

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I hereby certify that on July 30, 2019, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

**PLAINTIFFS' UNOPPOSED MOTION TO ENTER FINAL JUDGMENT AFTER  
REMAND; [PROPOSED] ORDER**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on July 30, 2019, at Sacramento, California.

---

Eileen A. Ennis

Declarant

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/s/ *Eileen A. Ennis*

Signature

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